

Tide II

TITLE II

APPELLATE CODE

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TITLE II

APPELLATE CODE

Chapter 1. GENERAL SECTION

2-1-1. Composition of the Appeals Court [*As amended by Ords. 27(88), 22(89), DOI 3(98)*]

The composition of the Appellate Court is set forth in section 1A-5-2.

2-1-2. Selection Procedure [*As amended by Ords. 27(88), 22(89), DOI 3(98)*]

The Appellate Judges shall be appointed as provided in Chapter 11 of Title IA.

2-1-3. Term of Office [*As amended by Ords. 22(89), DOI 3(98)*]

The Term of Office for Appellate Judges is set forth in Chapter 9 of Title IA.

2-1-4. Compensation [*As amended by Ords. 22(89), DOI 3(98)*]

The compensation for Appellate Judges shall be set by the Tribal Council, provided that once so set any reduction in a sitting Appellate Judge's compensation must comply with section 1A-15-3.

2-1-5. Grounds for Removal [*As amended by Ord. DOI 3(98)*]

Grounds for Automatic Removal of an Appellate Judge are set forth in section 1A-17-2. Grounds for Removal by Complaint are set forth in section 1A-17-3.B.

2-1-6. Procedure for Removal [*As amended by Ords. 22(89); DOI 3(98)*]

Procedures for Automatic Removal and Removal by Complaint of an Appellate Judge are set forth in Chapter 17 of Title IA.

No Appellate Judge shall hear or decide an appeal if that Judge:

- (1) Decided any material matter in the Trial Court proceedings;
- (2) Is related by blood or marriage to the appellant or appellee, if such relationship is in the first degree, such as brother, sister, parent, spouse, child, stepchild, foster child, adopted child, former spouse, grandparent, great grandparent, uncle or aunt (whether by blood or marriage), or a first cousin; or
- (3) Would benefit personally and to a much greater degree than members of the general public of the Northern Cheyenne Reservation from any particular disposition of the appeal; or
- (4) Would otherwise be in a position where his or her impartial judgment might be significantly affected.

An Appellate Judge shall disqualify himself in any appellate case in which he has a substantial interest, or as otherwise provided for above, or where, in that Judge's opinion, it would be otherwise improper to sit on appeal.

A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Appellate Court stating facts and reasons for the belief that prejudice exists. The affidavit must be filed within five days of the designation of the Appellate Judge to hear the appeal.

If two other Appellate Judges agree prejudice in accordance with the above provisions exists, another Judge will be appointed to hear the case.

A party may file only one such affidavit of prejudice in any case.

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Chapter 2. ADMINISTRATION

2-2-1. Administrative Responsibilities [As amended by Ord. DOI 3(98)]

The Chief Appellate Judge, designated as provided in section 1A-5-3, shall have overall administrative authority over the Appellate Court as provided in section 1A-5-4.

2-2-2. Clerk's Duties [As amended by Ord. DOI 3(98)]

The Office of the Court Clerk, administered by the Court Clerk subject to the supervision of the Chief Trial Judge, shall serve the entire Northern Cheyenne Court as provided in sections 1A-7-1 and 1A-7-2.

2-2-3. Court Sessions [As amended by Ord. DOI 3(98)]

The Appellate Court shall convene whenever there is a case to be heard.

Chapter 3. GENERAL PROCEDURES

2-3-1. Who Can Appeal [As amended by Ord. DOI 3(98)]

Any party adversely affected by a decision of the Trial Court in a civil case may appeal that decision. Any party in a criminal case, except the prosecution, may appeal from any final order, commitment, or judgment of the Trial Court. The prosecution in a criminal case may appeal only alleged procedural error.

2-3-2. How to Request an Appeal [As amended by Ord. DOI 3(98)]

An appeal is commenced in a civil case by filing an original and one copy of a Request for Appeal with the Court Clerk within five days of the date of the Trial Court's adverse decision. In a civil case, the party requesting appeal must also file two copies of his brief and a copy of the trial transcript with the Court Clerk within twenty days of requesting an appeal. In criminal cases an appeal must be requested within two days of the decision and briefs are due within ten days.

2-3-3. Clerk's Duties [As amended by Ord. DOI 3(98)]

When a Request for Appeal is received, the Court Clerk will notify the Chief Appellate Judge and opposing parties within three days of the Request. After the briefs and transcript are received, the Clerk will distribute the transcript and one copy of the brief to the Chief Appellate Judge and the other brief to the opposing party within two days. The opposing party's brief, when received, will also be distributed in two days.

2-3-4. Opposing Party's Response [*As amended by Ord. DOI 3(98)*]

In a civil case, the opposing party will have fifteen days from the date the appealing party brief is received to file an opposing brief [*cont'd on p. II-6*]

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and any Request for Cross-Appeal supported by the opposing brief. In a criminal case the opposing brief and any Request for Cross-Appeal must be filed within five days of receiving the appealing party's brief. A party shall have ten days from receipt of a Request for Cross-Appeal to file a responsive brief.

2-3-5. Consequences of Missing Filing Dates [As amended by Ord. DOI 3(98)]

If any party does not file his Request for Appeal within the stated time limits, he loses his opportunity to appeal. If any party does not file his brief within the stated time limits, the case will be decided without that brief.

2-3-6. Filing Fee [As amended by Ord. DOI 3(98)]

The appealing party shall pay a \$20 filing fee at the time the Request for Appeal is filed to the Court Clerk.

2-3-7. Costs [As amended by Ord. DOI 3(98)]

The costs of an appeal rest on the appealing party unless the Trial Court's decision was the result of the Trial Judge's conflict of interest as determined by the Appellate Court; then the opposing party is responsible for the costs of appeal.

2-3-8. Satisfaction of Judgment [As amended by Ord. DOI 3(98)]

All judgments and orders of the Appellate Court shall be enforceable through and by the Trial Court. Upon compliance with and satisfaction of the judgment or order, the Court Clerk shall notify the Chief Appellate Court Judge.

2-3-9 Extension of Time Limits [As amended by Ord. DOI 3(98)]

The Appellate Court, for good cause, may extend any time limit set in this Chapter.

Chapter 4. FULL APPEALS

2-4-1. Who Hears the Appeal [As amended by Ord. DOI 3(98)]

A full appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted as provided in section 1A-5-5.

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2-4-2. What May be Appealed [As amended by Ord. DOI 3(98)]

Any final decision of the Trial Court may be appealed unless the right of appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law.

2-4-3. Standards on Full Appeal [As amended by Ord. DOI 3(98)]

The Appellate Court may decide not to hear an appeal in a civil case if the Request for Appeal is frivolous or the information in the Request is clearly false, as determined by the Appellate Court.

When an appeal is heard, the Appellate Court may affirm, modify, reverse, or remand the Trial Court's decision. There can be a modification or reversal only where there were no facts to support the decision or there was a misapplication of the law.

2-4-4. When Oral Arguments Heard [As amended by Ord. DOI 3(98)]

In a civil or criminal case, oral argument shall be held only if ordered by the Appellate Court.

2-4-5. No Majority on the Decision [As amended by Ord. DOI 3(98)]

In *en banc* reviews, if no majority is reached on a decision, then the decision rendered by the single Appellate Judge shall stand.

2-4-6. Written Decision [As amended by Ord. DOI 3(98)]

The Appellate Court's decision shall be in writing and shall contain the facts and issues of the case, the rules of law relied on, the reasoning of the Court, and the decision.

2-4-7. Time Limits [As amended by Ord. DOI 3(98)]

The written decision in a civil or criminal case shall be issued within fifteen days of the later of: the date the last brief is due or the date of oral argument.

Chapter 5. IMMEDIATE APPEALS

2-5-1. Who Hears Immediate Appeals [As amended by Ord. DOI 3(98)]

An immediate appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted as provided in section 1A-5-5.

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2-5-2. What May be Immediately Appealed [As amended by Ord. DOI 3(98)]

A party may request an immediate appeal in the following circumstances, unless the right to immediate appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law:

- a. injunctions: Trial Court order prohibiting or allowing a particular action.
- b. mandamus: Trial Court order directing the Tribe or its Instrumentalities or a Tribal Representative, as these terms are defined in section 1-3-2, to perform or refrain from performing a particular act as part of its or his official duties or to restore to a party rights and privileges of which has been illegally deprived; provided the foregoing shall not be construed as a waiver of sovereign immunity under section 1-3-2.
- c. interlocutory: Trial Court order deciding some point before the end of a case that is not a final decision in the case.
- d. habeas corpus: Trial Court order to produce a detained person, justify the detention, and provide any related relief.

2-5-3. Time Limits [As amended by Ord. DOI 3(98)]

The request for an immediate appeal must be made in writing in the Request for Appeal. Within three days of such filing, the Appellate Judge will decide in writing whether the appeal will be processed as an immediate appeal, dismissed or processed as a full appeal. If processed as an immediate appeal, a written decision on the appeal shall be issued as soon as possible, but no later than ten days after the Request for Appeal is filed.

2-5-4. Standards on Immediate Appeal [As amended by Ord. DOI 3(98)]

The Appellate Court on an immediate appeal may affirm, modify, reverse, or remand the Trial Court's order. The order may be modified or reversed only if there was no evidence to support the order.

2-5-5. Notice of Immediate Appeal [As amended by Ord. DOI 3(98)]

The appealing party must notify the opposing parties of the request for an immediate appeal at or prior to the time the Request for Appeal is filed with the Court Clerk or the appeal will not be processed as an immediate appeal.

2-5-6. Submission of Information by Parties [As amended by Ord. DOI 3(98)]

When the appeal is processed as an immediate appeal, all parties shall submit their reasons for having the order reversed or affirmed or modified, in writing and/or orally at a hearing as the Appellate Court requests. Information not submitted by the parties will not be considered by the Appellate Court in reaching a decision.

2-5-7. Written Decision [*As amended by Ord. DOI 3(98)*]

The Appellate Court's decision on an immediate appeal shall be written, stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision.

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2-5-8. Full Appeal Not Precluded [*As amended by Ord. DOI 3(98)*]

The processing and disposition of an immediate appeal does not preclude a full appeal of the Trial Court's final decision in the case.

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